

MINUTES  
BOARD OF SUPERVISORS  
COUNTY OF YORK

Regular Meeting  
October 5, 2004

7:00 p.m.

Meeting Convened. A Regular Meeting of the York County Board of Supervisors was called to order at 7:01 p.m., Tuesday, October 5, 2004, in the Board Room, York Hall, by Chairman Thomas G. Shepperd, Jr.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zarembo, Sheila S. Noll, Kenneth L. Bowman, James S. Burgett, and Thomas G. Shepperd, Jr.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

Invocation. Miss Aagya Mathur, York County Youth Commission, gave the Invocation.

Pledge of Allegiance to the Flag of the United States of America. Chairman Shepperd led the Pledge of Allegiance.

**PRESENTATIONS**

EMPLOYEE RECOGNITION PROGRAM

Chairman Shepperd congratulated Dennis S. Cann, Department of General Services, on attaining 25 years of service with the County, and he presented him with his 25-year service pin and certificate.

YOUTH COMMISSION

Chris Rhodes, Chairman of the York County Youth Commission, stated all the members are looking forward to a productive and active year. In August the Commission had its orientation, and he thanked Mr. McReynolds, Dr. Staples, Mr. Burgett, Frank Rogers, and Ryan Touhill for spending so much time with the Commissioners during the orientation. Since then he stated they have been quite busy conducting two monthly meetings and a work session to discuss goals and projects. He stated the Commission's goal is to be more visible and effectively represent the youth of the County to the Board of Supervisors. The Special Projects committee hopes to do another town hall meeting during the Youth Week Event and this fall sponsor the Vote Teen initiative that was started by the Commission last year. Mr. Rhodes stated the Commission will again participate with Yorktown Day on October 19, and on October 30 they will participate with the adopt-a-highway program for Goodwin Neck Road. Suggestion boxes will be placed in high school offices in order to get feedback from the students, and there will be a video to introduce the Youth Commission and provide information on issues and upcoming events. He stated the Commission will represent the County's youth on the 2025 Comprehensive Plan steering committee, and the Public Relations committee will publicize the Commission's goals. The Commission hopes to distribute Youth Commission information through the high school media programs, and a new initiative is to keep closer contact with student councils.

Chairman Shepperd noted the Youth Commission has a very ambitious schedule, and he thanked the Commissioners for representing the youth of the County. He wished them the best of luck, and stated the Board looks forward to hearing the results of the Commission's endeavors.

### STORMWATER ADVISORY COMMITTEE

Mike Bossie Chairman of the Stormwater Advisory Committee, and Lou Lafrenaye made a presentation on what the committee has done over the last two years and on recommendations that the committee feels will improve drainage issues throughout the county. He provided some history on the establishment of the committee in 2002, and noted the Board of Supervisors has received a completed biennial report on committee activities. Mr. Bossie then reviewed the accomplishments of the committee, stating its recommendations should influence policy and funding considerations on stormwater lake and management practices. He then provided a synopsis of the recommendations contained in the report. Mr. Bossie thanked the County staff for all its support, and he stated the final report will be available on the County's website and in the reference section of the County's libraries.

Mr. Bowman thanked the committee for all the hard work to develop some solutions to the drainage problems in the County. He stated the recommendations have been reviewed by County staff who have worked directly with the committee in putting them together, and they are solid recommendations.

Chairman Shepperd stated the things the committee has listed in the report are very specific and the kind of information the Board needs to act upon. He noted there are significant funding recommendations that are based on knowledge of the County's situation. Chairman Shepperd stated the recommendations will be reviewed over the next budget cycle.

### **CITIZENS COMMENT PERIOD**

Mr. Richard Epstein, 2223 N. Mallory Street, Hampton, stated he had purchased a lot in York County for a home at a tax sale, and later found out that monies are still owed to the County for a sewer tap. The County auctioned the property and did not advertise any liens on the property. He stated he thought he was buying the property free and clear of any improvements done prior to his ownership, and he asked for clarification as to why the monies were not paid from the sale of the property.

Chairman Shepperd indicated the Board would turn Mr. Epstein's request over to the County Attorney for review and response to Mr. Epstein.

### **COUNTY ATTORNEY REPORTS AND REQUESTS**

Mr. Barnett stated he would be out of the office on Thursday afternoon and Friday morning attending the Local Government Attorney's seminars in Norfolk.

Mr. Zaremba asked Mr. Barnett if when Mr. Elliott sells a piece of property at auction the money is used to insure the property is free and clear and the liens are paid out of the proceeds.

Mr. Barnett stated he had spoken to Mr. Epstein, and it may not have been a lien because there was no requirement to hook up.

Mr. Zaremba asked Mr. Barnett to report to the Board on this matter as soon as possible.

### **COUNTY ADMINISTRATOR REPORTS AND REQUESTS**

Mr. McReynolds reminded the Board that on October 13 a joint meeting with the Planning Commission is scheduled for 5:30 p.m. in York Hall. He noted that October 14 is the date for the next Homeowners' Associations meeting at the Senior Center. The next Regular Meeting of the Board will be held on October 26. Mr. McReynolds also noted that the 23rd annual Occasion for Industry will be held on October 27.

**MATTERS PRESENTED BY THE BOARD**

Mr. Burgett indicated he had read a recent editorial about broadcasting work sessions which stated Hampton needs to broadcast its work sessions. He stated he noticed the article recognized James City County and Williamsburg as localities that broadcast, and he found it interesting because York County has been doing it for years. Mr. Burgett noted the Board members toured the Riverwalk recently, and they are very excited to see the progress. He indicated it will be quite a place and a source of pride for the County. He then noted he has attended several meetings of the Comprehensive Plan Review Committee, and he stated input from the citizens is being sought, and the meetings are being advertised significantly. Mr. Burgett then mentioned the progress on the revitalization of Route 17, stating the paint job on the Gallery on the York is quite good and was done through one of the County's grants. He also reminded everyone that Yorktown Day is coming up, and the adult exchange from Zweibrucken is coming.

Mr. Zaremba stated Yorktown Day is an entire day of events to which all the citizens are invited. He also spoke concerning the Board's televised sessions, stating the Board has been doing so for at least five years, and James City County and Williamsburg took their lead from York County. He then spoke regarding plans for new homes on Richmond Road in Lightfoot where the developer would like to utilize a mixed use of business activities with residences. He stated it is a concept that is spreading rapidly across the country that allows people to go to work and shop and minimize the use of the automobile. He stated he feels it might be something the County should be looking at, and the Board of Supervisors needs to discuss. He also stated the Board needs to be brought up to speed on the potential development of that area of the County.

Mrs. Noll expressed her agreement with Mr. Zaremba about mixed use, stating she is a strong proponent. She addressed the Comprehensive Plan open houses, stating the attendance has been abysmal with more staff and volunteers at the meetings than residents. She stated she feels it is a shame that the citizens are not more interested in what is going on in this County. She indicated the Board members and staff are not mind-readers, and she stated the citizens should not come back to the Board later and say they are not satisfied because they had their chance. Mrs. Noll noted that October is Breast Cancer Awareness Month, and she encouraged women not to put off taking care of themselves.

Mr. Bowman indicated that last week he, Mr. Noel, and Mrs. Noll, attended the Peninsula Alliance for Economic Development dinner in Williamsburg, noting that Larry Saboto was the speaker who made a great presentation on the upcoming elections. Regarding the Comprehensive Plan, Mr. Bowman stated it is the citizens' opportunity to be heard, and there is a lot of subject matter that needs to be discussed, and the Board of Supervisors needs the citizens' input. He noted the homeowners' associations meeting will be held on October 14, and one of the subjects will be the Comprehensive Plan. Mr. Bowman then addressed the development of the Great Wolf Lodge, stating it is a phenomenal project, and he cannot wait to see it finished. Mr. Bowman then noted he has put out his newsletter to District 3 residents, and asked that anyone interested in receiving it to send him an email.

Chairman Shepperd noted the Board had heard from the Navy regarding its noise abatement procedures, and he stated the Navy is working with the Federal Aviation Administration to address the issue, and Newport News City Councilwoman McMillan has also sent a letter. He indicated that all of the Board members should have received a letter on the Alliance merger proposal, and he asked that they share their comments through email to each other. He stated that on October 26 the Alliance has been asked to make a presentation to the Board on the merger. Mr. Shepperd noted the Zweibrucken exchange program is coming up. He also spoke concerning the Comprehensive Plan, stating the word complacency scares him, but it is why he feels the attendance at the review meetings is low. York County is a well-run government, but where the problem lies on the horizon is that if the complacency continues, the quality of life aspect will suffer in the county. The Comprehensive Plan is a living guide, and the citizens can always come to the Board at any time to ask for a change. Mr. Shepperd stated it is so much easier now to make the changes rather than through a rezoning request later.

Meeting Recessed. At 7:53 p.m. Chairman Shepperd declared a short recess.

Meeting Reconvened. At 8:02 p.m. the meeting was reconvened in open session by order of the Chair.

## **PUBLIC HEARINGS**

### **APPLICATION NOS. ZM-89-04, WILLIAMSBURG FURNITURE, AND UP-647-04, HOLIDAY CADILLAC**

Mr. Carter made a presentation on Application Nos. ZM-89-04 and UP-647-04 to rezone a portion of a parcel of land located on the south side of Second Street from high density Single Family Residential to General business, and to approve a use permit authorizing the expansion of an existing motor vehicle sales and service facility at 539 and 543 Second Street. The Planning Commission considered the applications and forwarded them to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the applications through the adoption of proposed Ordinance No. 04-25 and proposed Resolution R04-143. He further noted that the staff memorandum contained some substitute language for condition #3 should the Board not wish to require the applicant to replace the current signage with a monument sign.

Mr. Burgett stated he has driven past this place many times and did not realize they sold used cars. He indicated he felt it is an important part of the signage for the business, and he asked how the applicant can get a sign for used cars.

Mr. Carter indicated there can be only one sign per parcel with a principal use on the parcel. They can add additional square footage if it falls within the area limitations to the existing sign. The only other way to have a second sign would be to do it on the former Greener Side site, but they would have to establish a separate office facility on the site.

Mr. Burgett stated he did not see many dealerships with monument signs, and he asked if there is a requirement by the manufacturer that the sign has to be a pole sign.

Mr. Carter stated there was no requirement that he was aware of.

Mr. Burgett expressed his displeasure that the Planning Commission minutes contained mention of an anonymous letter that was read. He stated the Board of Supervisors does not read anonymous letters, and he did not feel the Planning Commission should either. He stated the people who write these letters should have the courage to stand up and put their name on their comments.

Discussion followed concerning the VDOT right-of-way property and it being left in a grassy state. Discussion also took place concerning the proposed bikeway.

Mr. Mike Baust, representing the applicant, clarified several issues concerning the acquisition of the 20 feet in front of the applicant's property and the 20 feet in front of the former Greener Side site. He stated the applicant is planning on vacating the property line in the center and converting the intervening green strip into stormwater management. Regarding the fire access and the requirement for the through lane, he stated the applicant had received a letter from the Fire Marshal stating if the neighbor allows access to the property through the back of the neighbor's property and a fire hydrant is installed at the back, there would not be a need for the through lane.

Discussion followed on the proposal to install a fire hydrant and remove the through lane.

Mr. Baust stated the dealership had been open since 1982 in York County, and he provided a history of the business since then. He spoke of taxes generated by the dealership for the County, and he asked for the approval of the two applications, with the following exemptions:

remove condition #3 to keep the existing signage, and extend the current two islands to 9 feet to allow the existing display area to remain unchanged rather than have a third island.

Mr. Burgett asked if there are certain requirements by the dealership for the signage.

Mr. Art Hudgins, the applicant, stated there were no requirements placed by the dealership, but he would rather have a high sign. He stated a monument sign looks great, but he cannot market his used cars now, and a monument sign will keep more people from seeing the sign.

Chairman Shepperd called to order a public hearing on Application Nos. ZM-89-04 and UP-647-04 which were duly advertised as required by law. Proposed Ordinance No. 04-25 and proposed Resolution R04-143 are entitled:

Proposed Ordinance No. 04-25:

AN ORDINANCE TO APPROVE A REQUEST TO REZONE AN APPROXIMATELY 10,149-SQUARE FOOT PORTION OF PARCEL NO. 10-16, LOCATED ON THE SOUTH SIDE OF SECOND STREET (ROUTE 162), FROM R13 - HIGH DENSITY SINGLE FAMILY RESIDENTIAL TO GB - GENERAL BUSINESS

Proposed Resolution R04-143:

A RESOLUTION TO APPROVE A SPECIAL USE PERMIT TO AUTHORIZE EXPANSION OF AN EXISTING MOTOR VEHICLE SALES AND SERVICE FACILITY AT 539 AND 543 SECOND STREET

There being no one present who wished to speak on the subject applications, Chairman Shepperd closed the public hearing.

Mr. Zaremba stated he did not feel the sign issue is much of an issue, that the applicant is a well known dealership of new and used cars. He spoke about the development on Second Street, stating that toward Capitol Landing Road it gets seedier and seedier, and all of it happens to be in the City of Williamsburg. He stated it is terrible from an aesthetic standpoint because it is a main corridor into the historic Williamsburg area. Mr. Zaremba stated the benefit of this application to the County is the significant upgrade to the corridor.

Mrs. Noll noted that if the applicant gets the right-of-way land from VDOT he will be grandfathered for the sign. She stated it is a TCM corridor, and the Board feels obliged to require certain aesthetics in that corridor. Mrs. Noll stated she sees no reason for not approving the application with the monument sign.

Mr. Bowman stated he feels this applicant will enhance the area, noting there are a lot of vacant buildings. He agreed with Mr. Burgett that he does not think much of unsigned letters, but he highlighted some points in the letter that need to be taken into consideration. He asked Mr. Hudgins if he has a paint booth inside the building that is enclosed.

Mr. Hudgins stated there is an enclosed paint booth. He stated he must follow OSHA standards, so there will be no worry about paint fumes.

Mr. Burgett stated the requirement for a bike path to nowhere is ridiculous and an additional expense that is unnecessary. The only item in contention about the application is the monument sign. Mr. Burgett stated if the applicant is unable to acquire the land from VDOT and he has to go with the monument sign, then so be it; but he indicated he would like to work with the applicant and give him the necessary time to work with VDOT, and he would like that included in the use permit through the use of the substitute language.

Chairman Shepperd asked Mr. Carter to tell the Board how the ordinance and resolution is going to affect the current signage and the potential for monument sign.

Mr. Carter stated if the Board adopts the proposed resolution as is, it would require that the existing sign be converted to a monument sign, regardless of whether or not the applicants get additional property from VDOT. If no right-of-way is required, the sign will have to be located 10 feet behind the current line. If the applicant does get the property, the sign will have to be placed 10 feet behind that property line. Mr. Carter stated if the Board chooses to go with the substitute language, it would be a substitute for condition #3 in the resolution, and it states the applicant has one year to acquire the additional property from VDOT in order for the existing pole sign to stay. If the applicant is unsuccessful, he would have to take the existing sign down and put up a monument sign.

Discussion on using the substitute language contained in the staff memorandum.

Chairman Shepperd asked about the islands.

Mr. Carter stated the islands were recommended to get at the landscaping that the TCM district requires. The applicant would like to eliminate the island in the center.

Chairman Shepperd stated the problem he has is that the Board has made a major statement to other businesses in the community about monument signs when they did not want them. He stated the Board must be ready to start working with every business on these monument signs if it allows this applicant to keep its pole sign. Mr. Shepperd indicated the Board has to be consistent.

Mr. Burgett stated it has been mostly with new developments that the Board has required monument signs. The sign for this dealership has been there for 20 years, and he stated he did not feel it would be such a special exception. Mr. Burgett indicated the Board should give the dealer a chance to maintain the sign he has had for 20 years.

Chairman Shepperd indicated the Board has made a big deal about Route 17 and is working hard to deal with the businesses regarding improvements. He stated the Board has to keep in mind that it must be ready to take this type of action with all the businesses regarding these signs.

Mr. Zaremba stated that every case will be different factually, and it will be the facts that drive the Board's decision. He indicated nothing comes to his mind on Route 17 that comes close to what is being discussed tonight. Nothing would preclude the businesses on Route 17 from making a request to the Board, and the Board will be objective in reviewing them.

Mrs. Noll then moved the adoption of proposed Ordinance No. 04-25 that reads:

AN ORDINANCE TO APPROVE A REQUEST TO REZONE AN APPROXIMATELY 10,149-SQUARE FOOT PORTION OF PARCEL NO. 10-16, LOCATED ON THE SOUTH SIDE OF SECOND STREET (ROUTE 162), FROM R13 - HIGH DENSITY SINGLE FAMILY RESIDENTIAL TO GB - GENERAL BUSINESS

WHEREAS, Daniel S. Jones has submitted Application No. ZM-89-04, which requests amendment of the York County Zoning Map to reclassify from R13 (High Density Single Family Residential) to GB (General Business) approximately 10,149 square feet of land located off the south side of Second Street (Route 162) at the southwest quadrant of Second Street and Merrimac Trail (Route 143), and further identified as portions of Assessor's Parcel No. 10-16; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the 5th day of October, 2004, that Application No. ZM-89-04 be, and it hereby is, approved to amend the York County Zoning Map by reclassifying from R13 (High Density Single Family Residential) to GB (General Business) approximately 10,149 square feet of land located off the south side of Second Street (Route 162) at the southwest quadrant of Second Street and Merrimac Trail (Route 143), and further identified as Assessor's Parcel No. 10-16 and more fully described in the York County Registry of Deeds Deed Book 220, Page 339 and as shown on a plat titled "Plat Showing the Proposed Rezoning of 537A Second Street, County of York, Virginia," prepared by Rickmond Engineering, Inc., and received by the Planning Division on August 2, 2004.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Bowman, Burgett, Shepperd  
Nay: (0)

Mrs. Noll then moved the adoption of proposed Resolution R04-143(R) that reads:

A RESOLUTION TO APPROVE A SPECIAL USE PERMIT TO AUTHORIZE EXPANSION OF AN EXISTING MOTOR VEHICLE SALES AND SERVICE FACILITY AT 539 AND 543 SECOND STREET

WHEREAS, Holiday Chevrolet-Cadillac, Inc., has submitted Application No. UP-647-04, which requests a Special Use Permit, pursuant to Section 24.1-306 (Category 12, No. 5(b)) of the York County Zoning Ordinance, to authorize expansion of an existing motor vehicle sales and service facility located at 543 Second Street (Route 162) and expansion of the sales/display operation onto the adjacent parcel at 539 Second Street, said parcels being identified as Assessor's Map Nos. 10-19 and 10-18, respectively; and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 5th day of October, 2004 that Application No. UP-647-04 be, and it is hereby, approved to authorize the expansion of an existing motor vehicle sales and service facility located at 543 and 539 Second Street (Route 162) and identified as Assessor's Map Nos. 10-19 and 10-18; subject to the following conditions:

1. This use permit shall authorize the expansion of an existing motor vehicle sales and service facility located at 543 Second Street and its expansion onto property located at 539 Second Street, said parcels being identified as Assessor's Map Nos. 10-19 and 10-18, respectively.
2. A site plan, prepared in accordance with the provisions of Article V of the York County Zoning Ordinance, shall be submitted to and approved by the County for the proposed use. Said site plan shall be in substantial conformance with the sketch plan submitted by the applicant titled "Holiday Chevrolet-Cadillac, Inc., Proposed Site Conditions," dated August 31, 2004, prepared by Rickmond Engineering, Inc., and received by the

Planning Division on August 31, 2004, except as modified herein or as may be necessary to comply with site plan review requirements and except as necessary to reflect the incorporation of a 20-foot wide green space strip across the frontage of the parcels that the applicant proposes to acquire from the Virginia Department of Transportation, should that acquisition be approved and executed by VDOT.

3. Provided that the applicant is successful in acquiring a sufficient amount of excess right-of-way from the Virginia Department of Transportation to establish a front setback of at least ten (10) feet for the existing freestanding identification signage, said signage may remain in place as a lawfully existing freestanding sign. In the event the applicant and VDOT cannot complete such a transfer within one (1) year of the date of this use permit approval, the applicant shall be required to remove the existing freestanding identification sign and any replacement signage shall comply in all respects to the requirements of the TCM Overlay district.
4. There shall be three additional landscape islands installed along the front of Parcel 10-19 within the row of existing vehicle display parking spaces abutting the front right-of-way line. Said islands shall be equivalent in size to a standard parking space as set forth in the Zoning Ordinance, and shall be located one at either end of the row of parking, and one centrally located in the row of spaces.
5. A 35-foot landscape yard shall be established as shown on the above-referenced site plan bordering the southern property boundary of the entire subject site. Existing trees and shrubs shall be preserved where possible, and shall be supplemented with a mix of evergreen trees and shrubs for screening the vehicle sales facility from adjacent residential properties equivalent to a Type 35 transitional buffer. Screening shall be supplemented with opaque fencing no less than six feet in height of a type meeting the approval of the Zoning Administrator and located along the northern boundary of the landscape yard.
6. Except as specified in Condition Nos. 4 and 5 above, the site shall conform to landscaping standards as set forth in Section 24.1-240 et. Seq. of the Zoning Ordinance.
7. The proposed building additions shall be substantially in conformance with architectural elevations submitted by the applicant titled "Holiday Chevrolet-Cadillac, Inc.," dated August 2, 2004, prepared by Infrastructure, Inc., and received by the Planning Division on August 27, 2004.
8. All site lighting shall be designed with full cutoff fixtures and directed downward to prevent off-site glare on to abutting properties and the road right-of-way. Illumination levels shall not exceed 0.1 foot-candle at any residential property line. All lighting fixtures shall be consistent with the lighting recommended by the Illumination Engineering Society of North America (IESNA). A photometric plan detailing all proposed fixtures and ground illumination levels shall be submitted for approval at the time of application for site plan approval.
9. In accordance with Section 24.1- 256(d) of the Zoning Ordinance, a shoulder bikeway shall be constructed across that portion of the subject site abutting the Merrimac Trail right-of-way prior to occupancy of the proposed building addition.
10. In accordance with Section 24.1-475(h) of the Zoning Ordinance, there shall be no parking, storing or display of motor vehicles within the public road right-of-way fronting the subject parcels.
11. In accordance with Section 24.1-115(b)(6) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this Special Use Permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court.

On roll call the vote was:

Yea: (5) Noll, Bowman, Burgett, Zaremba, Shepperd  
 Nay: (0)

#### SALE OF COUNTY PROPERTY

Mr. James W. Noel, Director of Economic Development, made a presentation on proposed Resolution R04-141 to authorize the sale of a portion of a parcel of real estate owned by the County located at 311 Redoubt Road (Lot 29, Victory Industrial Park) to Just of York, LLC.

Mr. Philip Hatchett, representing Just of York, LLC, indicated he was present to answer any questions the Board might have.

Chairman Shepperd then called to order a public hearing on proposed Resolution R04-141 which was duly advertised as required by law and is entitled:

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A CONTRACT FOR THE SALE TO JUST OF YORK, LLC, PROPERTY OWNED BY THE COUNTY AND LOCATED AT 311 REDOUBT ROAD, BEING A PORTION OF LOT 29 IN VICTORY INDUSTRIAL PARK, CONSISTING OF APPROXIMATELY 35,322 SQUARE FEET FOR THE SUM OF \$106,000

There being no one present who wished to speak concerning the subject resolution, Chairman Shepperd closed the public hearing.

Mrs. Noll moved the adoption of proposed Resolution R04-141 that reads:

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A CONTRACT FOR THE SALE TO JUST OF YORK, LLC, PROPERTY OWNED BY THE COUNTY AND LOCATED AT 311 REDOUBT ROAD, BEING A PORTION OF LOT 29 IN VICTORY INDUSTRIAL PARK, CONSISTING OF APPROXIMATELY 35,322 SQUARE FEET FOR THE SUM OF \$106,000

WHEREAS, the County is the owner of Lot 29 in Victory Industrial Park, having an address of 311 Redoubt Road, consisting of approximately 51,750 square feet; and

WHEREAS, the County desires to retain ownership of a portion of the said Lot 29 for purposes of access from Redoubt Road to a portion of the County's Waste Management Facility which is adjacent to the property, such use requiring only a right-of-way of approximately 70' in width across a portion of Lot 29; and

WHEREAS, the County has received an offer from Just of York, LLC, to purchase the balance of Lot 29, consisting of 35,322 square feet for the sum of \$106,000 as shown on a draft Plat of Resubdivision of Lot 29 attached to the County Administrator's Memorandum of September 20, 2004; and

WHEREAS, following the holding of a public hearing pursuant to Code of Virginia § 15.2-1800, this Board has determined that it is in the public interest to accept the offer and to sell a portion of Lot 29 in Victoria Industrial Park to Just of York, LLC;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 5th day of October, 2004, that the County Administrator is authorized to execute a contract with Just of York, LLC, for the sale of the above-described portion of Lot 29, Victory Industrial Park, for the sum of \$106,000, such contract to be approved as to form by the County Attorney, and thereafter to take such actions as are necessary to complete the sale, including the expenditure of such funds as may be required for customary closing costs chargeable to a seller.

On roll call the vote was:

October 5, 2004

Yea: (5) Bowman, Burgett, Zaremba, Noll, Shepperd  
Nay: (0)

## **UNFINISHED BUSINESS**

### **REFUND OF TAXES: WILLIAMSBURG PLANTATION**

Mr. Barnett made a presentation on proposed Resolution R04-147 to authorize the payment of a refund of business license tax to Williamsburg Plantation, Inc. He indicated that the Attorney General has interpreted that a business is taxed where the real estate is located. For BPOL purposes Williamsburg Plantation is an entirely James City County business. He noted the business must also have \$25,000 in sales to be required to have a business license.

Mr. Burgett noted a company like MCI that does telemarketing just has an office location. He asked what the difference is between this telephone operation and MCI.

Mr. Barnett stated that MCI is not classified as a contractor, and there are a different set of rules.

Mr. Zaremba indicated these timeshare companies put the people who take the tour up in hotels all over the community, and the timeshare is paying the hotel for this. He stated the money the timeshare is paying the hotel is going to be recouped out of the sale of the timeshare. This transaction is done exclusively in York County, and he asked if that is an argument for the business generating revenue and specifically being linked to York County.

Mr. Barnett stated it would be income to the hotel where they stay which would be taxed by the County.

Discussion followed concerning the County having to pay interest on the refund and the reclassification of the subject business to a contractor.

Chairman Shepperd stated the issue is whether or not the Board feels this issue warrants the action of litigation. If the Board denies the refund, the applicant will take the Board to court. He stated the state says the Board has to make this refund with the associated interest.

Mrs. Thomas indicated this is a very unique situation, and there are five timeshares in the County. She noted that Williamsburg Plantation has paid the transient occupancy tax amount it has collected every month, but she must do an audit to make sure it is the proper amount.

Mrs. Noll then moved the adoption of proposed Resolution R04-147 that reads:

#### **A RESOLUTION TO AUTHORIZE PAYMENT OF REFUND OF BUSINESS LICENSE TAX TO WILLIAMSBURG PLANTATION, INC.**

WHEREAS, York County Code § 21-7.3 requires approval from the Board of Supervisors for the payment of any refund of taxes, penalties and interest in excess of \$2,500.00; and

WHEREAS, Williamsburg Plantation Inc. has made application to the Commissioner of the Revenue for a refund of a portion of the business license taxes it paid in 2001, 2002, and 2003 due to the over collection of business license tax; and

WHEREAS, the Request for Tax Refunds has been approved and recommended by the Commissioner of the Revenue, the Treasurer, and the County Attorney.

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 5th day of October, 2004, that the Treasurer is authorized to refund to Williamsburg Plantation, Inc. business license taxes in the amount of \$12,549.67, plus interest of \$2,820.15, for a total refund of \$15,369.82.

On roll call the vote was:

Yea: (4) Zaremba, Noll, Bowman, Shepperd  
Nay: (0) Burgett

### **CONSENT CALENDAR**

Mrs. Noll moved that the Consent Calendar, Item No. 4, be approved as submitted.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Bowman, Burgett, Shepperd  
Nay: (0)

Thereupon, the following minutes were approved:

### **Item No. 4. APPROVAL OF MINUTES**

The following minutes of the York County Board of Supervisors were approved:

September 7, 2004, Regular Meeting  
September 14, 2004, Adjourned Meeting

**CLOSED MEETING.** At 9:28 p.m. Vice Chairman Burgett moved that the meeting be convened in Closed Meeting pursuant to Section 2.2-3711(a)(1) of the Code of Virginia pertaining to appointments to Boards and Commissions.

On roll call the vote was:

Yea: (5) Noll, Bowman, Burgett, Zaremba, Shepperd  
Nay: (0)

Meeting Reconvened. At 9:42 p.m. the meeting was reconvened in open session by order of the Chair.

Mrs. Noll moved the adoption of proposed Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREE-  
DOM OF INFORMATION ACT REGARDING MEETING IN CLOSED  
MEETING

WHEREAS, the York County Board of Supervisors has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 5th day of October, 2004, hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

On roll call the vote was:

October 5, 2004

Yea: (5) Bowman, Burgett, Zaremba, Noll, Shepperd  
Nay: (0)

#### APPOINTMENTS TO THE YORK COUNTY WETLANDS BOARD

Mr. Burgett moved the adoption of proposed Resolution R04-131 that reads:

A RESOLUTION TO APPOINT A MEMBER TO THE YORK COUNTY  
WETLANDS BOARD AND TO APPOINT TWO ALTERNATE MEM-  
BERS

WHEREAS, Troy Maxwell resigned from the York County Wetlands Board on August 1, 2004; and

WHEREAS, the York County Wetlands Ordinance was recently amended to provide for the appointment of at least one but not more than three alternates; and

WHEREAS, the Wetlands Board has requested that two alternates be appointed;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 5th day of October, 2004, that Alvin K. Russell be, and he is hereby, appointed to the York County Wetlands Board to fill the unexpired term of Troy Maxwell, such term to begin immediately and expire on June 30, 2008.

BE IT FURTHER RESOLVED that Jan W. Briede and Nathan T. Smith be, and they are hereby, appointed as alternates to the York County Wetlands Board for five years, such terms to begin on October 1, 2004, and to expire on September 30, 2009.

On roll call the vote was:

Yea: (5) Burgett, Zaremba, Noll, Bowman, Shepperd  
Nay: (0)

#### APPOINTMENTS TO THE YORK COUNTY EMPLOYEE GRIEVANCE PANEL

Mr. Zaremba moved the adoption of proposed Resolution R04-148 that reads:

A RESOLUTION TO APPOINT TWO MEMBERS TO THE YORK  
COUNTY EMPLOYEE GRIEVANCE PANEL

WHEREAS, the terms of Mr. Paul W. Garman Mr. John "Jack" N. Rhoads on the Employee Grievance Panel will expire on September 30, 2004; and

WHEREAS, both Mr. Garman and Mr. Rhoads are eligible for reappointment and have indicated that they desire to continue to serve on the Employee Grievance Panel; and

WHEREAS, the Board has reviewed and considered Mr. Garman's and Mr. Rhoads's application as well as the applications of other citizens interested in serving in this capacity;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 5th day of October, 2004, that Paul W. Garman and John "Jack" N. Rhoads be, and they are hereby, appointed as members to the York County Employee Grievance Panel, such terms to begin October 1, 2004, and expire September 30, 2007.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Bowman, Burgett, Shepperd

Nay: (0)

Meeting Adjourned. At 9:49 p.m. Chairman Shepperd declared the meeting adjourned to 5:30 p.m., Wednesday, October 13, 2004, in the Gallery, York Hall, for the purpose of conducting a joint dinner meeting with the York County Planning Commission.

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James O. McReynolds, Clerk  
York County Board of Supervisors

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Thomas G. Shepperd, Jr., Chairman  
York County Board of Supervisors